



# STATE BAR COURT OF CALIFORNIA

## INTER-OFFICE COMMUNICATION

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**DATE:** October 7, 2005

**TO:** Members of the Board Committee on Regulation,  
Admissions & Discipline Oversight

**FROM:** Office of the Chief Trial Counsel

**SUBJECT:** Scope of Hearing in Moral Character Proceedings;  
Investigation and Discovery Periods –  
Proposed Addition of Rule 683 and Amendments to  
Rules 680, 682, and 687 of the Rules of Procedure –  
Request for Release for 90-Day Public Comment Period

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### *INTRODUCTION*

The purpose of this agenda item is to request authority of the Board Committee on Regulation, Admissions and Discipline Oversight (“RAD Committee”) for the publication, for a 90-day public comment period, of the proposed addition of new rule 683 and proposed amendments to rules 680, 682, and 687 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”) in the form attached hereto as Appendix A. The proposed addition and amendments would clarify the Rules of Procedure as they relate to moral character proceedings and hearings. The proposed amendments merely codify existing practices and do not alter the scope of or the procedures applicable in moral character proceedings and hearings.

### *RECOMMENDATION*

The Office of the Chief Trial Counsel recommends that the RAD Committee authorize the release of the proposed addition of new rule 683 and the proposed amendments to rules 680, 682, and 687 of the Rules of Procedure, in the form attached hereto as Appendix A, for a 90-day public comment period.

### *DISCUSSION*

Rule 680 outlines the scope of State Bar Court proceedings and hearings to determine the moral character of applicants seeking review of adverse moral character

determinations by the Committee of Bar Examiners. Currently, the scope of the State Bar Court's moral character hearings is not necessarily limited to those matters that were considered by the Committee of Bar Examiners. Instead, it is based on the independent investigation and discovery conducted by the Office of the Chief Trial Counsel. This is not explicitly stated in rule 680. The proposed amendments to rule 680 are intended to clarify the scope of the moral character hearings.

An applicant's request for review of an adverse moral character determination by the Committee of Bar Examiners is the initial pleading in a moral character proceeding. Currently, pursuant to rule 682, the State Bar's response to an applicant's request is not due until 120 days after the service of the initial pleading. In addition, the general rules relating to discovery in State Bar Court proceedings also apply in moral character proceedings. However, those rules aren't entirely clear as they relate to moral character proceedings. Rule 181(a) provides that all discovery must be completed within 120 days after service of the initial pleading, unless the time for discovery is extended or shortened by the Court. Rule 182(b), on the other hand, provides that formal discovery may not be served on any party until 20 days after the date the State Bar's responsive pleading is served, or 140 days after service of the initial pleading in moral character proceedings.

The current practice of some Hearing Judges is to allow the State Bar to have a 120-day "investigation period" (similar to the investigation period applicable to reinstatement proceedings) and then apply an additional 120-day discovery period.

The proposed amendments to rule 682 and 687 and the addition of rule 683 are intended to codify this practice. The proposed amendments to 682 would specifically allow a 120-day investigation period for the Office of the Chief Trial Counsel. The proposed amendments would also allow the Office of the Chief Trial Counsel to file a response to the application no later than ten days after the end of the investigation period. The proposed addition of a new rule 663 would allow a 120-day reciprocal discovery period for the parties to be completed within 120 days after the end of the investigation period unless that discovery period is shortened or extended by the State Bar Court. Finally, the proposed amendment to rule 687(b) clarifies that rules 181 and 182(b) do not apply in moral character proceedings. However, the other provisions of rules 180-189 relating to discovery would continue to apply in moral character proceedings.

### ***PROPOSED RESOLUTION***

If you agree that the proposed addition of new rule 683 and the proposed amendments to rules 680, 682, and 687 of the Rules of Procedure should be released for a

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90-day public comment period, your adoption of the following resolutions would be appropriate:

**RESOLVED**, that the Board Committee on Regulation, Admissions and Discipline Oversight hereby authorizes the release of the proposed addition of new rule 683 and proposed amendments to rules 680, 682, and 687 of the Rules of Procedure, in the form attached hereto as Appendix A, for a 90-day public comment period; and

**FURTHER RESOLVED**, that authorization by the Board Committee on Regulation, Admissions and Discipline Oversight for publication for public comment is not, and shall not be construed as, a recommendation or approval by the Board of Governors of the materials published.

## APPENDIX A

### I. MORAL CHARACTER PROCEEDINGS

#### RULE 680. SCOPE

These rules apply to proceedings and hearings before the State Bar Court to determine whether an applicant for admission to the practice of law in California possesses good moral character within the meaning of Business and Professions Code section 6060(b) and rule X of the Rules Regulating Admission to Practice Law in California. The hearings before the State Bar Court are de novo and are not limited to matters considered by the Committee of Bar Examiners.

#### RULE 681. COMMENCEMENT OF PROCEEDING; TIME FOR FILING

*[Unchanged.]*

#### RULE 682. TIME PERIOD FOR COMPLETING INVESTIGATION; RESPONSE TO APPLICATION

- (a) For one hundred twenty (120) days from the filing of the application, the Office of the Chief Trial Counsel shall conduct an independent investigation of the applicant's moral character. For good cause, the investigation period may be extended by the Court.
- (b) No later than ten (10) days after the end of the investigation period, the Office of the Chief Trial Counsel shall file with the Court and serve a response to the application. ~~A response to the application shall be filed within one hundred twenty (120) days of service of the application or within such time period as may be granted by the Court for good cause.~~ The response shall include a statement of the grounds upon which the application is opposed, if any.

#### RULE 683: TIME PERIOD FOR COMPLETING DISCOVERY

- (a) The parties may conduct discovery following the filing of the Office of the Chief Trial Counsel's response to the application. Formal discovery shall be completed within one hundred twenty (120) days after the end of the investigation period unless, for good cause, the discovery period is shortened or lengthened by the Court on its own motion or on the motion of any party.

- (b) Discovery requests must be served so as to allow each responding party sufficient time to respond within the discovery period.

**RULE ~~683~~684. ABATEMENT OF PROCEEDING**

*[Unchanged.]*

**RULE 687. INAPPLICABLE RULES**

The following rules shall not apply in a moral character proceeding:

- (a) Rules which by their terms apply only to disciplinary proceedings or to other specific proceedings, and
- (b) Rules 116-118 (abatement); rules 181 and 187(a) (time for completing and serving discovery); rules 200-210 (default; obligation to appear at trial); and rules 215-217 (admission of certain evidence).